IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 181

THE F. W. FITCH COMPANY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF JOSEPH H. CHOATE, JR. AND MAURICE LÉON AS *AMICI CURIAE*

JOSEPH H. CHOATE, JR.,
MAURICE LÉON,
Amici Curiae.

December, 1944.

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The undersigned, Joseph H. Choate, Jr., and Maurice Léon, respectfully ask leave of the Court to file herein the following brief as *amici curiae*.

They appear as counsel for the plaintiff in the case of Caron Corporation against Joseph T. Higgins, Collector, now pending in the United States District Court for the Southern District of New York which involves questions of law similar to those presented in this case.

Counsel for the petitioner and for the respondent herein have consented to the filing of this brief.

Summary of Argument

1

The Act literally interpreted, requires deduction of advertising and selling expense from the price on which the tax is based. In explicit terms it permits deduction of any "transportation, delivery, insurance, installation *or other charge.*" Advertising and selling charges are among such "other charges" unless the Act does not mean what it says.

2

Other provisions of the Act and its legislative history show that its literal meaning is its true meaning.

3

The only argument for a restricted meaning, such as would except advertising and selling charges from the permission to exclude "other charges," is that the *ejusdem generis* rule limits such "other charges" to charges resembling these enumerated. That rule is inapplicable because transportation, delivery, insurance and installation do not constitute a "genus" to which "other charges" can be limited, and because the rule is never allowed to reverse literal meaning when the indications from other provisions and legislative history point to the literal as the true meaning.

4

The Treasury regulations in force from the adoption of the 1932 Act until its amendment in 1939, permit deduction of "non-manufacturing charges," which must include advertising and selling charges. The 1939 Amendment was an adoption of, and not a change in, this administrative construction.

5

This is not an instance of a claim for a deduction from an established tax, requiring strict construction. The language in question is part of the original definition of the price on which the tax is levied. The ordinary rule requiring liberal construction in favor of the taxpayer is therefore applicable.

ARGUMENT

I

The price on which the Manufacturers' Excise Tax levied by the 1932 Revenue Act is based should exclude the manufacturers' selling and advertising expense. The decision under review erred in its refusal to follow the decisions of the Circuit Court of Appeals for the Seventh Circuit to this effect, and in its holding to the contrary.

A

The literal meaning of the Act is to that effect.

Section 619(a) defining the price on which the tax is to be based, provides that this price shall include certain manufacturing costs for container, &c., but that various non-manufacturing costs shall be excluded. The phrase covering the later is

> "A transportation delivery insurance installation *or other charge* (not required by the foregoing sentence to be included) shall be excluded * * *." (Italics ours.)

The "foregoing sentence" referred to is that which requires inclusion of charges for containers, &c.

Since advertising and selling costs are charges which any manufacturer who incurs them must include in his price if he is to live, they are clearly "charges" within the meaning of the section. They are not transportation delivery insurance or installation charges, but are "other

charges" since the phrase "other charges" is universal, comprising all charges other than those specifically excepted. As such other charges, therefore, advertising and selling are to be excluded if the Act means what it says. That this literal meaning is the true meaning, not to be limited or reversed by the "*ejusdem generis*" rule or otherwise, appears from the following considerations.

B

The language of the statute, considered as a whole, and its legislative history, show that Congress did not intend to tax the manufacturer on his selling and advertising costs.

The arguments for this proposition, are convincingly set forth in the decisions of the Seventh Circuit in *Campana Corp.* v. *Harrison*, 114 Fed. (2nd) 400 and 135 Fed. (2nd) 334. They are effectively presented and amplified in the petitioner's brief herein. The opinion under review does not attempt to answer them. We desire to state only the following single additional argument.

The section of the statute which determines how the price, on which the tax is to be based, shall be computed is § 619. This consists of two sub-sections: § 619(a) which prescribes generally what shall and what shall not be deducted, for the purpose of tax computation, from the price actually charged; and § 619(b) which prescribes how, in cases in which the price actually charged is abnormal, a normal price shall be estimated.

Since there is nowhere the slightest indication that the deductions under these two sections are to be different, the conclusion is inescapable that they are to be the same.

Section 619(b), however, as regards one of the classes of sales which it covers, definitely requires that the manu-

facturer's selling and advertising costs be excluded. As to each of three specified classes of sales, it prescribes, by a single phrase, making no distinction between them either as to deductions or anything else, how the tax should be computed. It is to be based, in all three classes, not on the price actually received, but on

> "the price for which such articles are sold in the ordinary course of trade by manufacturers &c."

That this price, in the case of all three classes of sales is a wholesale price is obvious, since manufacturers, in the ordinary course of trade, do not sell otherwise.

One of the three specified classes of sales, however, is "sales at retail." The requirement that these be taxed, as even the Treasury (Reg. 46, Art. 15) has always explicitly recognized that they must be, on wholesale and not on retail prices, in effect requires that the selling cost be deducted from the price actually received. Sales at retail, of course, cannot be made without retail selling expenses, which ordinary wholesale prices naturally exclude. The theoretical ordinary wholesale price cannot be computed without deducting them from the prices actually received. So here we have a class of sales on which such costs definitely are to be deducted.

It is inherently improbable that Congress meant to permit such a deduction in the case of manufacturers who sell in one way, and deny it to those who sell by a different method. No such intent can be imputed to any statute. If Congress had meant that deduction of selling costs should be allowed in sales at retail, but not in sales on consignments or sales not at arm's length, it would have said so.

C

The contrary construction adopted by the Court below involves discrimination between manufacturers which Congress cannot have intended.

It is common knowledge that many manufacturers incur enormous advertising and selling costs, and that others, selling to wholesalers or perhaps to a single distributor, incur practically none, the buyers doing the advertising. The advertising manufacturer's price, on which the tax is based, must cover his advertising as well as his manufacturing costs, or he will cease to do business. But if his tax is to be based on the whole price without deduction, and is thus to include, besides the tax on manufacture, a tax on advertising, &c., he can never compete with his non-advertising competitor, who for the same sales pays only a much smaller tax.

In *Ayer Co.* v. *U. S.*, 38 Fed. Supp. 284, followed in the opinion below, the Court of Claims expressed the odd opinion that this difference was unimportant because the manufacturer doubtless made a profit proportionate to his expense. This was pure conjecture; but, if correct, would have no tendency to show that Congress meant its tax on some manufacturers enormously to exceed that on others for similar sales, or to penalize overwhelmingly the advertising manufacturer's mode of conducting his business. The profit which the advertising manufacturer makes, however large it is, is subject to the tax, even if the tax be based, as we maintain that it should be, on the price after deduction of selling costs.

It is incredible that Congress intended, as the opinion below holds, to tax one manufacturer on a totally different basis of computation from another.

A simple illustration will show the enormous extent and arbitrary nature of the discrimination which would result from the decision under review. Manufacturers A and B each sell goods of which the manufacturing cost is $500,000. Manufacturer A sells his at arm's length without advertising or selling expenses, to a single distributor, for $800,000. He is taxed on this sum. Manufacturer B spends $1,000,000 in advertising and receives a total price of $1,800,000, making the same profit as Manufacturer A. Under the Act, as construed below, Manufacturer A would be taxed on $1,800,000. The discrepancy might well be worse. If Manufacturer B in the supposed case were introducing a new product, he might receive no profit over his combined manufacturing and selling costs; yet, under the opinion below, he would pay as a manufacturer's excise tax, a huge sum inflated by the entire cost of his advertising. Such a tax would not be a Manufacturer's Excise Tax at all, but a tax on advertising pure and simple; and there is nowhere a suggestion of evidence that Congress meant to levy such a tax.

D

The literal meaning of the Act should not be limited or reversed by the *"ejusdem generis"* rule. The learned Court below erred in basing its decision, as it did, solely upon that rule and upon an incorrect application thereof.

Disregarding all the considerations which show that Congress did not intend that the price should include selling costs, the opinion below construes the Section, 619(a), simply by applying the *ejusdem generis* rule. It holds, without other reasoning, that the direction to exclude "transportation, delivery insurance, installation or other" charges must under that rule be limited to charges similar to those specified, and that selling costs are not thus similar.

In discussing this conclusion, the first consideration must be that the rule is, as this Court said in *Given* v. *Hilton*, 95 U. S. 591, "a mere presumption easily rebutted by evidence of contrary intention." As the authorities cited in the petitioner's brief show, it can never operate when the text and legislative history of a statute indicate as they do in this instance a contrary intent. Second, the rule exactly reverses the literal meaning of language. Here, for example, when the statute says "transportation delivery insurance, installation or other" charges, the literal meaning of "other" necessarily includes only charges which are *not* transportation delivery insurance or installation charges, but are other or different in nature. The rule is, therefore, properly applied only when the Court can see from other indications of the legislative intent, that the literal is not the true meaning of the language to be construed. To apply it as the sole criterion of interpretation is unjustified; and just such applications have led many to regard the rule as the fount of infinite bad law.

Bearing in mind these reasons for caution in any use of the rule, the *ejusdem generis* rule as applied below, is inapplicable here for the following specific reasons.

(A)

IT NEVER APPLIES WHEN THE SPECIFIC INSTANCES ENUMERATED, BEFORE THE GENERAL WORDS, DIFFER MATERIALLY FROM EACH OTHER.

This is well established.

Lindsay & Phelps v. *Mullen*, 176 U. S. 126, 138;
Regina v. *Payne*, L. R. 1 C. C. 27;
Brown v. *Corbin*, 40 Minn. 508 (cited by this Court in *Lindsay* v. *Mullen*, *supra*);

Donaghy v. *State*, 29 Del. 467;
McReynolds v. *People*, 230 Ill. 623;
Darius v. *Apostolos*, 68 Col. 323.

In the statute under discussion, the particular instances differ from each other quite as widely as those in the cases cited, and too widely to constitute a genus to which the general term "other charge" can be confined. Charges for transportation, delivery and insurance are of course related; each is a charge covering transactions which occur after manufacture and pending receipt by the buyer. But a charge for installation is entirely outside of this category. It covers operations after receipt, and cannot possibly be or in any sense, resemble, a charge for transportation, insurance, or delivery. What "other charge" could resemble it, is hard to see. The only feature which a charge for installation has in common with the others is the fact that it is a non-manufacturing cost, as opposed to the various manufacturing costs, likewise enumerated (for containers, &c.) which the section (619(a)) requires to be included. Either the "genus" is as wide as this, or there is none to which the rule can apply; and if the sole trait common to the enumerated charges is a non-manufacturing character, then the general words "other charge" must, even under the rule, comprise all other non-manufacturing charges, including the selling expenses here in question. Quite probably it was upon this view that the Treasury based the ruling, issued on the enactment of the statute and continued unchanged until 1939 (Art. 12, Reg. 46, cited in *Campana* v. *Harrison*, 114 Fed. (2nd) at p. 410), that

> "charges which have no connection with the manufacturing process * * * are to be excluded in computing the tax."

(B)

THE COURT BELOW APPLIED THE EJUSDEM GENERIS RULE TO A PART ONLY OF THE LANGUAGE WHICH DEFINES THE CHARGES WHICH ARE TO BE EXCLUDED.

The opinion below discusses the meaning only of the words

> "A transportation, delivery, insurance, installation or other charge."

The complete language, however, is

> "A transportation, delivery, insurance installation or other charge (not required by the foregoing sentence to be included)."

The "foregoing sentence" referred to is that which requires inclusion in the basis-price of

> "any charge for coverings or containers of whatever nature and any charge incident to placing the article in condition packed ready for shipment."

In defining the charges which were to be excluded, therefore, the Congress carefully and specifically excepted from the definition these charges for containers, &c. It is elementary that the making of specific exceptions indicates an understanding that, but for the exception, the excepted items would be included. Nothing can be clearer, however, than that no charge for any covering or for any container, or for placing any article in condition *for* shipment could be a transportation charge or a charge for delivery or insurance or installation or a charge *ejusdem generis* with any or all of these. If, however, the words "other charge" mean what they say—any other charge *not* similar to transportation, delivery, insurance, or installation

charges—the excepted charges for containers, &c. would fall within the excluding category, and so would require specific exception. The making of the exceptions, thus, can only be accounted for by an intention on the part of the Congress that the "other" charges which were to be excluded should comprise all other charges incurred by the manufacturer which he would have to include in his price, and not be limited by the *ejusdem generis* rule.

E

The learned Circuit Court of Appeals for the Seventh Circuit in the second *Campana* case (135 Fed. (2nd) 334) was right in holding that the provision of the 1939 amendment, specifically excluding selling costs, was declaratory of the existing law.

The 1939 amendment, enacted as Section 3401 of the Internal Revenue Code, 53 Stat. 862, 863, in defining the excluded charges omits, after the words "transportation, delivery, insurance" the word "installation." It adds after the words "or other charge" and before the exception (not required by the foregoing sentence to be included)

> "and the wholesalers salesmen's commissions and costs and expenses of advertising and selling."

This new language aptly states the effect of the Treasury regulation already quoted (Art. 12, Reg. 46) which permitted the exclusion of

> "charges which have no connection with the manufacturing process."

The Amendment thus constituted a Congressional adoption of an administrative interpretation which had been maintained by the Treasury for more than six years.

It will presumably be argued that since the 1939 Amendment was prospective only, it must have been meant to change, rather than declare, the existing law. This, however, is fallacious, for several reasons. First, in view of the long-standing Treasury regulation re-stated in the Amendment nothing was to be gained by making retroactive the words requiring the exclusion of selling costs. Second, the Amendment contained other features which were new and were naturally not meant to be retroactive—for example, those requiring the inclusion of container charges only when incurred by the manufacturer; the provision that unless the manufacturer owned 75% of the first purchaser, the sale was to be deemed, *prima facie*, at arm's length; and the requirement that the same items be deducted whether the sale was at arm's length or not. These charges were to apply only on future sales, and are ample to account for the prospective character of the amendment without assuming that the exclusion of selling costs was new.

It may also be argued that in *Ayer* v. *U. S.*, 38 Fed. Supp. 284, the Court of Claims held that the 1939 Amendment excluded, not the manufacturers', but only the wholesalers', costs and expenses of advertising and selling.

That this view is untenable should be demonstrated by the briefest analysis. The tax was an excise tax on manufacturers, not on wholesalers. It was to be based on the manufacturers' price. How could any sane Congress require computation of that price by deducting from it someone else's costs and expenses of selling and advertising? The results of such a computation would be ludicrous. Manufacturer Jones might receive from Wholesaler Smith a price of $100,000. Wholesaler Smith might spend in selling and advertising a sum vastly greater than $100,000.

If Smith's selling costs were deductible, Jones would pay no tax at all. No such nonsense can have been intended.

It may be urged that in the *Campana* case the deductions permitted by the Court were in fact of the wholesaler's advertising and selling costs, rather than those of the manufacturer. There, however, the Court was not taxing the wholesaler's price less his costs, but was estimating under § 619(b) the imaginary or theoretical "price for which such articles are sold in the ordinary course of trade by manufacturers." It held the price actually charged by the selling corporation to be some evidence of this theoretical manufacturer's price, but to represent it fairly only after the selling costs were deducted. The selling costs were deducted, not because they were the wholesaler's, but because the manufacturer's price on which the tax was to be levied, should not include such items, no matter by whom incurred.

F

If there be doubt as to the right of the taxpayer to deduct advertising and selling costs, such doubt should be resolved in his favor.

It will probably be argued that we are relying upon an exception to (or deduction from) general language imposing a tax, that the authorities require strict construction of such exceptions, and that accordingly any doubt must be resolved against the taxpayer.

We respectfully submit that the deductions which we claim are not exceptions to language imposing a tax, but are a part of the definition in the taxing act itself, of the subject of taxation, and of the method of computation. The "price" taxed in § 603 is determined and defined only

in § 619. The two sections, of course, came into effect simultaneously. Nothing is a "price" taxable under § 603 unless within the definition in § 619. The net effect is just what it would have been if, following common practice, that definition had been included in a preliminary set of definitions at the beginning of the statute.

Accordingly, the case is within the ordinary rule requiring liberal construction in favor of the taxpayer, and taxing him only when there is no doubt as to the intention of Congress to do so. The rule requiring strict construction, against the taxpayer, of exceptions, is therefore inapplicable.

CONCLUSION

The decision below should be reversed.

December, 1944.

JOSEPH H. CHOATE, JR.,
MAURICE LÉON,
Amici Curiae.

SUPREME COURT OF THE UNITED STATES.

No. 181.—October Term, 1944.

The F. W. Fitch Company, a Corporation, Petitioner. *vs.* United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[January 15, 1945.]

Mr. Justice Murphy delivered the opinion of the Court.

Section 603 of the Revenue Act of 1932, c. 209, 47 Stat. 169, 261, Internal Revenue Code § 3401, imposes on toilet preparations sold by manufacturers or producers an excise tax equivalent to stated percentages "of the price for which so sold." Petitioner was subject to this tax from October 1, 1936, to June 30, 1939, and has sought a refund of a portion of the tax paid on the ground that its selling and advertising expenses should have been excluded from the selling prices in computing the tax. The District Court after trial upheld this claim and awarded a refund, 52 F. Supp. 292, but the court below reversed that judgment, 141 F. 2d 380. The alleged conflict with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *Campana Corp.* v. *Harrison*, 114 F. 2d 400, and *Campana Corp* v. *Harrison*, 135 F. 2d 334, led us to grant certiorari.

The controversy here centers about Section 619(a) of the Act, which provides for the inclusion and exclusion of certain items in computing the selling price for purposes of the tax levied by Section 603 as well as various other sections. Section 619(a) states that, in computing the sales price,

"... there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this title, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations."

Petitioner contends that advertising and selling expenses fall within the term "other charge" appearing in the last sentence

of Section 619(a) and hence are excludable in determining the selling price for tax purposes. This claim, however, is refuted by both the spirit and the letter of this statutory provision.

Congress sought in the Revenue Act of 1932 to use the manufacturer's or wholesaler's selling price, rather than the retail price, as the measure of the excise taxes imposed by Section 603. 75 Cong. Rec. 11383, 11657. Section 619(a) was designed to lay down specific rules for determining this selling price, especially in relation to costs incurred after the article itself had been manufactured. It provides for the use of the manufacturer's or producer's f. o. b. price at the factory or place of production. In essence, all manufacturing and other charges incurred prior to the actual shipment of an article and reflected separately or otherwise in the f. o. b. wholesale price are to be included in the sale price underlying the tax, while all charges incurred subsequent thereto are to be excluded. Hence any additional charge which a purchaser would not be required to pay if he accepted delivery of the article at the factory or place of production may be so excluded. See H. Rep. No. 708 (72d Cong., 1st Sess.) p. 37; S. Rep. No. 665, Part 3 (72d Cong., 1st Sess.) p. 3; H. Conf. Rep. No. 1492 (72d Cong., 1st Sess.) p. 22.

Advertising and selling expenses incurred by a manufacturer such as petitioner clearly fall within the class of charges which Congress intended to be included in the tax base. Regardless of whether we consider such expenses technically as manufacturing costs, it is obvious that they are incurred prior to the actual shipment of articles to wholesale purchasers and that they enter into the composition of the wholesale selling price. Even if the purchaser accepts delivery at the factory, he pays for the advertising and selling expenses. Thus they must be included in the taxable sales price.

The inclusion of these expenses is plainly warranted by the language of Section 619(a). Pre-shipment charges relative to coverings, containers and placing an article in condition for shipment are specifically included in the determination of the selling price. But a subsequent "transportation, delivery, insurance, installation, or other charge" is to be excluded if properly established. In the setting of this case, no rule of reason or grammar justifies placing advertising and selling expenses within the meaning of this exclusionary sentence.

To begin with, advertising and selling expenses are obviously not comparable to the specified charges for transportation, delivery,

insurance or installation—all of which are incurred subsequent to the preparation of an article for shipment and are not included in the manufacturer's f. o. b. selling price. Hence advertising and selling expenses cannot be encompassed by the term "other charge" unless that term be taken to include charges entirely dissimilar to those specified. This term, however, was understood by its framers to mean "like charges" or "similar charges" to those specifically enumerated in the same sentence. H. Rep. No. 708 (72d Cong., 1st Sess.) p. 37; S. Rep. No. 665, Part 3 (72d Cong., 1st Sess.) p. 3; H. Conf. Rep. No. 1492 (72d Cong., 1st Sess.) p. 22. When this fact is added to the general intent of Congress to include all costs or charges incurred prior to shipment, the applicability of the *ejusdem generis* rule to the term "other charge" becomes clear. This rule, which appropriately may be invoked here since it does not conflict with the general purpose of the statute, compare *S. E. C.* v. *Joiner Corp.*, 320 U. S. 344, 350, 351, with *Smith* v. *Davis*, 323 U. S. —, limits the "other charge" to expenses similar in character to those incurred for transportation, delivery, insurance and installation. Since advertising and selling expenses arise prior to shipment and are necessarily components of the f. o. b. selling price, the term "other charge" cannot cover them.[1] They must be included in the tax base. Such has been the consistent administrative construction of the statute. G. C. M. 21114, 1939-1 Cum. Bull. 351, 353. And such is the result made necessary by the accepted rules of statutory construction.[2]

It is argued that this conclusion results in a discrimination against a manufacturer who indulges in his own advertising and selling campaigns in favor of one whose products are advertised by his customers and that Congress could not have intended such a discrimination. But this discrimination, to the extent that it

[1] The parenthetical matter following the term "other charge" in the last sentence of Section 619(a)—"(not required by the foregoing sentence to be included)"—is not significant in this case. It serves simply to provide that, to the extent that the provisions for inclusion and exclusion may overlap, the former shall control.

[2] Section 3(a) of the Revenue Act of 1939, 53 Stat. 862, 863, Internal Revenue Code § 3401, excluded from the sale price "a transportation, delivery, insurance, or other charge, *and the wholesaler's salesmen's commissions and costs and expenses of advertising and selling.*" (Italics added.) Section 3(b) made this amendment prospective only and hence Section 3(a) cannot be taken as a Congressional declaration that the advertising and selling expenses were intended to be excluded from the selling price under the Revenue Act of 1932. On the contrary, the very fact that Congress found it necessary in 1939 to exclude such expenses specifically is persuasive evidence that prior thereto advertising and selling expenses were not meant to be excluded.

may exist, is an unavoidable consequence of an excise tax based on the wholesale selling price. Such cost factors as labor, materials and advertising naturally vary among competing manufacturers; different costs and different methods of doing business in turn may cause the wholesale selling prices to lack uniformity. And if these prices are taxed without adjustment for differing cost factors, tax inequalities and discriminations inevitably result. But where, as here, a flat tax is placed on the wholesale selling prices and no statutory provisions are made for relief from the resulting natural tax inequalities, courts are powerless to supply it themselves by imputing to Congress an unexpressed intent to achieve tax uniformity among manufacturers selling at wholesale.[3]

Finally, petitioner urges that Section 619(b) must also be considered in order to ascertain the true Congressional intent and in order to give Section 619(a) its proper construction. But Section 619(b) merely provides that where the manufacturer sells at retail, on consignment or otherwise than through an arm's length transaction, the tax shall be based upon a figure determined by the Commissioner with reference to the prices at which similar articles are sold in the ordinary course of trade. Inasmuch as petitioner's sales were made at wholesale, Section 619(b) has no direct application to this case. But it does serve to emphasize the failure of Congress to make similar provisions for tax equalization under Section 619(a) where the manufacturer's sales are at wholesale. It cannot, however, vary the plain intent and language of Section 619(a) and Congressional statements[4] relating to the desirability of eliminating discriminations against manufacturers making retail sales cannot be taken as evidence of a desire to prevent the natural inequalities that result when a tax is placed on the wholesale selling price.

Affirmed.

Mr. Justice ROBERTS ~~is of opinion that the judgment should be affirmed~~ concurs in the result.

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[3] Congress has subsequently realized that the excise tax on the wholesale selling price created tax inequalities among manufacturers. In Section 552 of the Revenue Act of 1941, 55 Stat. 687, 718, Congress substituted a retail excise tax for the manufacturer's excise tax on toilet preparations. The reasons assigned for the change were that under the earlier law "evasion is substantial and inequitable competitive situations are created." H. Rep. No. 1040 (77th Cong., 1st Sess.), p. 33.

[4] See H. Rep. No. 708 (72d Cong., 1st Sess.), pp. 32-33; 75 Cong. Rec. 5693, 5694.